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March 14, 2023

VIA CM/ECF ONLY

The Honorable Richard G. Andrews
United States District Court
for the District of Delaware
J. Caleb Boggs Federal Building
844 N. King Street
Wilmington, Delaware 19801

Re: *Del. State Sportsmen's Ass'n, Inc., et al. v. Del. Dep't of Safety and Homeland Sec., et al.; Gabriel Gray, et al. v. Kathy Jennings, et al.*, C.A. No. 22-cv-951-RGA (Consolidated)

Dear Judge Andrews:

In response to Your Honor's March 7, 2023 Order (D.I. 55), the DSSA Plaintiffs will voluntarily dismiss their Delaware state law claims brought pursuant to Article I, § 20 of the Delaware Constitution—without prejudice to re-file or transfer those claims to state court, provided that the State will not try to remove those claims back to this Court as they have done recently in a similar case.

The DSSA Plaintiffs agree to this procedure without prejudice despite their position that the State has waived its Eleventh Amendment and *Pennhurst*-related immunity defense by not raising it in any of their several pleadings to-date, including no mention of it in their Motion to Dismiss or in their response to the Motion for Preliminary Injunction of the Plaintiffs—as well as the implied waiver occasioned by the removal by the State to this Court of a related pending action based on both the Second Amendment and analogous claims under the Delaware Constitution. *See Birney, et al. v. Delaware Department of Safety and Homeland Security, et al.*, No. 22-cv-01624-RGA (D. Del.).

The Hon. Richard G. Andrews
March 14, 2023
Page 2

Notably, Plaintiffs brought the issue of *Pennhurst* and Eleventh Amendment immunity to the attention of the State, and required that it be included in the parties' March 6, 2023 joint status letter to the Court (D.I. 53), promptly after the Plaintiffs became aware of the issue. Nonetheless, despite the State's waiver and DSSA Plaintiffs' argument that they may arguably still have the ability to seek declaratory relief (as compared to injunctive relief) under state law in this Court, we will voluntarily proceed as described.

Respectfully,



Francis G.X. Pileggi
(Del. Bar No. 2624)

FGXP

cc: Clerk of Court
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Caneel Radinson-Blasucci, Esquire
Kenneth L. Wan, Esquire
David E. Ross, Esquire
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